



Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x. OMB 0651-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

915-006.052

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]

on

6/25/2007

Signature

Kelly Puglio

Typed or printed
name

Kelly Puglio

Application Number

10/509,783

Filed

Sept. 29, 2004

First Named Inventor

Robert Kamphuis

Art Unit

2617

Examiner

Doan, Kiet M.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐

applicant/inventor.

☐

assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

☒

attorney or agent of record.
Registration number 56,885

☐

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34

Signature

Shiming Wu

Typed or printed name

(203) 261-1234

Telephone number

June 25, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.

☒

*Total of 1 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Inventor: **Robert Kamphuis**
Application No.: **10/509,783**
Filing Date: **Sept. 29, 2004**
Title: **Method and system for checking the attainability status of
a mobile terminal device**
Group Art Unit: **2617**
Examiner: **Doan, Kiet M.**

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

Sir,

In response to the final Office Action mailed February 23, 2007, a Notice of Appeal is filed herewith. Applicant respectfully requests a pre-appeal brief conference for reviewing the pending application.

******If any fee and/or extension is required in addition to any enclosed herewith, please charge Account No. 23-0442.***

CERTIFICATE OF MAILING/TRANSMISSION (37 CFR § 1.8(a))

I hereby certify that this correspondence is, on the date shown below, being:

MAILING

- ☒ Deposited with the United States Postal Service with sufficient postage as first class Mail in an envelope addressed to Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

FACSIMILE

- ☐ Transmitted by facsimile to the U.S. Patent and Trademark Office.

Date: 6/25/2007

Signature Kelly Puglio

Kelly Puglio

(type or print name of person certifying)

REMARKS

This application includes claims 1-17, all of which are rejected. A complete list of the current claims can be found in Applicant's response submitted on November 27, 2006.

Claim Rejections under 35 USC §102

In the Office Action of February 23, 2006, claims 1-17 are rejected under 35 USC §102(e) as being anticipated by Lorello *et al.* (U.S. Patent No. 6,459,904, Lorello hereinafter). Among the pending claims, claims 1, 10, 12, 14 and 16 are independent, and claim 1 directs to a method.

The present invention pertains to short message delivery in cellular communication networks. Generally speaking, a short message is delivered from a service center (SC) to a short message service center (SMSC) and then from the SMSC to a mobile terminal device (MS).

In the Office Action on page 2, the Examiner states that the rejection is based on the following limitation of claim 1,

"if said mobile terminal device is attainable, said service center delivering said communication to said short message service center for delivering to said mobile terminal device."

as being anticipated by Lorello. The Examiner alleges that the reference clearly indicated that the message is delivered to the mobile terminal device when the subscriber/mobile device becomes available/attainable and, if not, the message is retained in the SMSC for later delivery.

The Applicant does not dispute this assertion.

However, the Examiner seems to have misinterpreted the preceding steps in claim 1 that result in the above-mentioned delivery attempt by the SMSC. Applicant respectfully requests reconsideration of the rejection because these steps are clearly different from the teachings of Lorello.

First, in the present invention, the service center (SC) queries the SMSC for obtaining attainability status of a mobile terminal device (MS) for the purpose of delivering a communication (e.g. a short message) to the MS. At this point, the short message is not delivered to the SMSC. Therefore, the SMSC does not receive the actual short message but a query. In Lorello, on the other hand, the SMSC receives a short message intended for a subscriber from a source of the short message (such as a SC) (col. 4, lines 1-4). Therefore, the SMSC does receive the actual short message.

Second, in the present invention, in response to the query from the SC, the SMSC provides attainability status of the MS by evaluating connection-related data stored in the SMSC. The connection-related data is related to messages pending for delivery to the MS. Note that even though the delivery mechanism of the present invention does not require an actual delivery of a message to the SMSC before obtaining attainability status of the MS, there may be other message sources that have sent the SMSC messages for delivery to the MS or have made queries about attainability of the MS, and the SMSC may retain undelivered messages if the MS is not attainable. Lorello teaches that upon receiving the short message, the SMSC sends a request for routing information to HLR (home location register), and the HLR sends back routing information and availability of the MS (col. 4, lines 4-11). At this point, the SMSC still has the short message and has not delivered it to the MS.

Third, in the present invention, if the MS is attainable, the SC delivers the short message to the SMSC and the SMSC delivers the short message to the MS. Logically, it is resulted from the present invention that if the MS is not attainable, the SC does not deliver the message to the SMSC for delivering to the MS. The SMSC has no messages to keep, and the SMSC will not attempt any later delivery because it has not retained undelivered messages from the SC. In Lorello, on the other hand, if the MS is attainable/available, the SMSC delivers the short message to the MS (col. 4, lines 18-24). Otherwise, if the MS is not available, the SMSC keeps the message for later delivery (col. 4, lines 24-30).

The differences between the present invention and the prior art as presented above may be summarized in the following Table 1:

Table 1: Differences between claim 1 and Lorello

Claim 1	Ref. Lorello
Method, comprising: a service center providing a query to a short message service center in a cellular network for obtaining attainability status of a mobile terminal device in order to determine whether to deliver a communication to said mobile terminal device, <i>(SMSC receives a query, it <u>does not</u> receive the short message.)</i>	SMSC receives a short message from a source (the source may be a SC) (col. 4, lines 1-4).
said short message service center responding to the query by evaluating connection related data stored in said short message service center, wherein said connection related data is related to messages pending for delivery to said mobile terminal device,	Upon receiving the short message, the SMSC sends a request for routing information to HLR, and HLR sends back routing information and availability of MS (col. 4, lines 4-11). SMSC has the message but has not delivered it yet.
if said mobile terminal device is attainable, said service center delivering said communication to said short message service center for delivering to said mobile terminal device. <i>(If the MS is not attainable, the SC does not deliver the message to SMSC and SMSC has no messages to keep nor later delivery attempts to make.)</i>	If the mobile terminal device is attainable/available, the SMSC delivers the short message to the mobile terminal device (col. 4, lines 18-24). If the MS is not available, the SMSC keeps the message for later delivery (col.4, lines 24-30).

As it can be seen from the above, the present invention requires the message source to obtain attainability status of the mobile terminal device prior to delivering a message to the mobile terminal device. The actual message is not delivered from the SC to the SMSC unless the mobile terminal device is attainable. The invention makes utilizing the short message services more efficient by eliminating many unnecessary delivery attempts.

The method of Lorello is useful as a regular short message delivery mechanism in which attempts are made in order to deliver a specific message to a specific subscriber. The present invention may be viewed as a variation to the regular short message services and it is especially useful in situations where a message is targeted to a lot of subscribers

and many of the subscribers are not attainable. Also, a SMSC may use more than one messaging mechanism at same time and the message source can select how the message is to be delivered according to its nature and priority.

According to the reasons stated above, claim 1 is not anticipated by Lorello and should be patentable. Other independent claims 10, 12, 14 and 16 are amended previously to incorporate the patentable features of claim 1. Therefore, they are also patentable. All other claims, being dependent from one of the patentable independent claims, are patentable as well. Applicant respectfully requests the rejection of claims 1-17 under USC §102(e) be reconsidered and withdrawn.

Conclusion

For all the foregoing reasons, it is believed that all of the claims in the instant application are allowable, and their passage to issue is earnestly solicited. Applicant's agent urges the Examiner to call to discuss the present response if anything in the present response is unclear or unpersuasive.

June 25, 2007

Date

Ware, Fressola, Van Der Sluys & Adolphson LLP
755 Main Street, P.O. Box 224
Monroe, CT 06468-0224
Telephone: (203) 261-1234
Customer No.: 004955

Respectfully submitted,



Shiming Wu
Agent for the Applicant
Registration No. 56,885